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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Implementation of the Telecommunications Act of 1996:	)	CC Docket No. 96-115
	)	
Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	)	
	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended	)	CC Docket No. 96-149

OPPOSITION OF MCI TELECOMMUNICATIONS CORPORATION TO PETITIONS FOR RECONSIDERATION AND FORBEARANCE

MCI TELECOMMUNICATIONS CORPORATION

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SUMMARY

MCI opposes the petitions filed by various local exchange carriers (LECs)for reconsideration of, and forbearance from the application of, the Second Report and Order (Order). Grant of such petitions would gravely weaken the protections for customer proprietary network information (CPNI) established in the Order in implementing Section 222 of the Communications Act.

First, reconsideration of the total service approach in order to allow any or all carriers to use CPNI to market services in another category without the customer's approval should be denied, whether or not the new service could be characterized as an "enhancement" to a service "package" already being provided to the customer. To permit such marketing would be directly contrary to the entire competitive and privacy rationale behind Section 222, as articulated in the Order. It would allow a LEC to exploit its monopoly-derived CPNI database to secure an unearned advantage over carriers with less customer information and would deprive the customer of effective control over his or her CPNI.

MCI also urges that the ILECs' requests for forbearance to allow carriers to market additions to a service package be denied, because none of the three criteria for forbearance are satisfied. Competition will be harmed, not promoted, if carriers with monopoly-derived CPNI advantages are able to win or retain customers based on those advantages, rather than having to

compete based on marketing skill and service quality.

Second, MCI requests that reconsideration of the winback prohibition as to ILECs be denied. The winback prohibition should not be lifted for ILECs using their unique monopoly-derived access to other carriers' proprietary information. However, MCI does not oppose elimination of the winback prohibition for any competitive carrier.

MCI also opposes forbearance from the application of the winback prohibition for ILECs exploiting carrier proprietary information. Forbearance would allow ILECs to forestall competition by using their informational advantages arising from their monopoly roles to retain customers intending to switch to competitive carriers. Such exploitation of monopoly advantages would constitute an unreasonable practice, within the meaning of Section 10(a)(1), and preventing such exploitation is necessary to protect consumers and to further the public interest, within the meaning of Sections 10(a)(2) and (3), respectively. Thus none of the forbearance criteria are met.

Third, MCI opposes requests that carriers other than CMRS providers be permitted to use CPNI to market CPE and information services without customer approval. There is no reason to treat CPE in connection with wireline services as part of the service offering under Section 222(c)(1)(A) or as necessary to or used in the provision of such service under Section 222(c)(1)(B). Such treatment would undermine the competitive goals of Section 222 and do permanent, severe damage to the developing ADSL market and

other advanced service markets, as well as to the related equipment markets. Because ILECs possess vastly greater amounts of CPNI than CLECs, being allowed to use CPNI to market such CPE without customer approval will greatly favor the ILECs. Thus reconsideration as to the use of CPNI to market CPE without customer approval should be denied.

MCI requests that forbearance relief allowing the use of CPNI to market CPE without customer approval be denied. The forbearance criteria cannot be satisfied in the case of the unapproved use of CPNI to market CPE to be used with advanced services and other local services.

MCI also requests that the Commission deny reconsideration as to the use of CPNI to market information services without customer approval. The statutory language precludes reconsideration for information services as much as for CPE. The unapproved use of CPNI to market such services will tend to disrupt the uninhibited competition that now exists in information services.

MCI urges that forbearance as to the unapproved use of CPNI to market information services outside the CMRS context be denied. ILECs would benefit disproportionately on account of their monopoly-derived CPNI databases. The negative competitive effects of such unapproved use of CPNI go beyond the information services market and would chill local service competition. Thus, forbearance would not be in the public interest.

Fourth, MCI opposes AT&T's request that previous customer

approvals not obtained in conformance with the current notification and approval solicitation rules be "grandfathered." The Order requires full notification of rights as an element of informed approval under Section 222(c)(1). AT&T failed to provide its customers with sufficient notice to enable them to actually give a knowing, informed approval to use or disclose CPNI within the meaning of Section 222(c)(1).

In addition, the grandfathering proposal must be rejected because of the harm it would cause to competition. It would be unconscionable to give AT&T a free pass at the outset, while all other carriers must provide the full notification and approval required by the Order. AT&T should therefore be required to start over and obtain customer approvals in the proper manner.

Finally, MCI has petitioned for reconsideration of the CPNI database "audit trail" requirement because of its unnecessary burdensomeness. However, MCI urges the Commission to deny the requests for the elimination of additional compliance safeguards, such as customer approval status "flagging." The Commission should assume that the elimination or modification of the audit trail requirement would reduce the burden on all carriers to such an extent that the remaining safeguards would not pose an unreasonable burden.

MCI also opposes various other requests for reconsideration that would weaken the Commission's CPNI regime, including requests to eliminate all CPNI rules for CMRS providers.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996:	)	CC Docket No. 96-115
	)	
Telecommunications Carriers' Use	)	
of Customer Proprietary Network	)	
Information and Other Customer	)	
Information	)	
	)	
Implementation of the	)	
Non-Accounting Safeguards of	)	CC Docket No. 96-149
Sections 271 and 272 of the	)	
Communications Act of 1934, as	)	
Amended	)	

OPPOSITION OF MCI TELECOMMUNICATIONS CORPORATION
TO PETITIONS FOR RECONSIDERATION AND FORBEARANCE

MCI Telecommunications Corporation (MCI), by its undersigned counsel, hereby opposes the petitions filed by various local exchange carriers (LECs) and other parties for reconsideration of, and forbearance from the application of, the Second Report and Order in these dockets (Order).[1] Grant of such petitions would gravely weaken the protections for customer proprietary network information (CPNI) established in the Order in implementing Section 222 of the Communications Act, as amended by the Telecommunications Act of 1996 (1996 Act).

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[1] Second Report and Order and Further Notice of Proposed Rulemaking, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, FCC 98-27 (released Feb. 26, 1998).

I. THE LECs' "SERVICE PACKAGE" PROPOSALS WOULD UNDERMINE THE COMMISSION'S TOTAL SERVICE APPROACH

A. Reconsideration Should be Denied

Perhaps the gravest single threat to the competitive and privacy goals of Section 222 is the request by certain incumbent LECs (ILECs) to allow carriers, in the absence of customer approval, to use CPNI derived from the provision of a "package" of services to market another type of service to be added to such a package. GTE Service Corporation, which debuted this proposal in its April 29, 1998 Petition for Temporary Forbearance or, in the Alternative, Motion for Stay of the Order, gives the example of a carrier that is providing a package of local and long distance services to a customer and that wants to "enhance" the package by using CPNI derived from those services to market wireless service to the customer.

According to GTE, a customer that is receiving a "package" of services from a carrier will regard the package, rather than the individual components in the package, as defining the service relationship and will therefore expect the carrier to bring to his attention enhancements to the package, irrespective of the type of service involved.[2] Under GTE's approach, such a package would have to include services from at least two of the three groupings -- local, long distance and CMRS -- used by the Commission in its total service approach in order to qualify for GTE's proposed exception. Ameritech similarly argues that the

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[2] GTE Pet. at 27-28.

"implied consent" that forms the basis for the Commission's total service approach should allow the use of CPNI, unapproved by the customer, to market CPE and services, including information services, that are outside the categories of services currently provided to a customer as long as such products and services are part of a package that includes related services within the categories from which the CPNI was derived.[3]

The National Telephone Cooperative Association (NTCA) requests a similar approach, but only for small carriers. NTCA argues that the total service approach disadvantages small carriers, which are less likely than larger carriers to be already providing more than one category of service and therefore more likely to need customer approval to offer an array of services. NTCA concludes that this limitation on small carriers' use of CPNI inhibits the delivery of advanced services in rural areas.[4]

Such relief from the total service approach, whether for some or all carriers, should be denied. To permit the use of CPNI to market another category of service without customer approval would result in a major rewriting, and undoing, of the Order. As a practical matter, there is little difference between a total offering that includes two service categories and an integrated service "package" that includes the same services. Thus, under the LECs' proposal, anytime a carrier offered

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[3] Ameritech Pet. at 6-7.

[4] NTCA Pet. at 3-4.

services from two of the three categories to a customer, it could use CPNI derived from those services to market any other service. For example, a LEC providing local and wireless services to a customer could use the CPNI derived from those services to market long distance service without customer approval. Characterizing the services already being provided as a package, or the service being marketed as "related to" the services already being provided, hardly alters the analysis.

Such an approach would be directly contrary to the entire competitive and privacy rationale behind Section 222, as articulated in the Order. A LEC in that situation would, in effect, be exploiting its monopoly-derived customer base advantage in order to expand into the long distance market and would deprive the customer of effective control over his or her CPNI. Indeed, the result in such situations would be no different from the single category approach, which the Commission rejected as "affording customers virtually no control over intra-company use of their CPNI" and because "[c]arriers already in possession of CPNI could leverage their control of CPNI in one market to perpetuate their dominance as they enter other service markets."[5] Ameritech would stretch this variation on the single category approach even further, since it would include information services and CPE within the scope of the packages that could be marketed using CPNI.

It is irrelevant, as GTE argues, that the service categories

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[5] Order at ¶ 37.

"would ... disappear naturally" once a carrier were providing all three categories of services to a customer.[6] The heart of the competitive struggle that Section 222 is intended to address is marketing by carriers attempting to break into new markets[7] and thus aimed at new prospects. Once a customer is taking all three categories of service from a carrier, the struggle has been resolved, at least to the extent that the use of that customer's CPNI must be restricted. Until that point, however, the statutory principles of customer convenience and control underlying Section 222 require that approval be sought before using CPNI to market a new service category.[8]

There is no support for GTE's assumption that customers would no longer care about the uninhibited use of their CPNI by carriers offering a package of services. Presumably, if a customer is taking services A and B from carrier 1 and service C from carrier 2, the customer would be surprised to learn that carrier 1 considered its own offering of service C to be within its relationship with the customer. It is especially clear that the customer would not share such an expansive view of her relationship with carrier 1 where service C is long distance service that the customer has deliberately chosen to take from carrier 2. Thus, the principles of customer convenience and control militate strongly against these LECs' casual approach to

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[6] GTE Pet. at 32.

[7] See Order at ¶ 37.

[8] See id. at ¶ 56.

service definitions under Section 222(c)(1).

The Commission recognized that, as GTE and NTCA argue,[9] incumbent carriers' penetration of new markets would be somewhat less effective if customer approval had to be sought before using CPNI, but

> [t]he 1996 Act was meant to ensure ... that, as markets were opened to competition, carriers would win or retain customers on the basis of their service quality and prices, not on the basis of a competitive advantage conferred solely due to their incumbent status.[10]

Thus, certainly in the case of GTE and Ameritech, the plea to blur the service categories can only be viewed as a Trojan horse for a wholesale exploitation of their vast, monopoly-derived CPNI databases to secure an unearned advantage over carriers with less customer information. Even in the case of the smaller LECs represented by NTCA, their customer databases, however small in absolute numbers, constitute a monopoly legacy which, if the service definitions under Section 222(c)(1) are blurred as NTCA advocates, will give them a "competitive advantage conferred solely due to their incumbent status," rather than "on the basis of their service quality and prices." Taken together, such an unearned marketing benefit for all small ILECs would have a negative impact on competition. Reconsideration of the total service approach in order to allow any or all carriers to use CPNI to market services in another category without the

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[9] See, e.g., GTE Pet. at 31 (penetration of new markets would be more effective if relief granted).

[10] Order at ¶ 66.

customer's approval should therefore be denied.

B. Forbearance Should be Denied

In the alternative, GTE and Ameritech seek forbearance from the application of the total service approach to such service package enhancements under Section 10 of the 1996 Act.[11] GTE argues that forbearance is required because the criteria of Section 10(a) are met. Forbearance is required under Section 10 if:

> 1. enforcement of the regulation or statutory provision in question "is not necessary to ensure that" the charges or practices "by, for, or in connection with" a carrier or telecommunications service "are just and reasonable and are not unjustly or unreasonably discriminatory;"
>
> 2. "enforcement of such regulation or provision is not necessary for the protection of consumers;" and
>
> 3. "forbearance from applying such provision or regulation is consistent with the public interest," taking into account whether forbearance will promote competitive market conditions.[12]

GTE claims that, first, under Section 10(a)(1), since at least one of the services in a qualifying package would be a competitive service (either long distance or CMRS), and since local services are regulated, service packages will be reasonably priced and not subject to discriminatory charges or terms, irrespective of the use of CPNI. Second, prohibiting the use of CPNI without customer approval to market service package enhancements is not necessary to protect consumers under Section

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[11] 47 U.S.C. § 160.

[12] 47 U.S.C. § 160(a), (b).

10(a)(2), since consumers welcome useful offers of service enhancements. Third, GTE claims that forbearance would be in the public interest under Section 10(a)(3), since it will reduce carriers' marketing costs and enhance their ability to introduce new competitive services, which will be especially useful for competitive LECs (CLECs) seeking ways to differentiate their packaged offerings from the ILECs' "a la carte" services.[13]

These forbearance requests, however, do not and cannot meet all three criteria under Section 10(a), as required for such relief.[14] GTE applies the Section 10(a) criteria with blinders on, thereby failing to take into account the ultimate impact of its approach on competition. The proper approach to the analysis that must be undertaken under Section 10(a) is illustrated by the BOC Forbearance Order.[15]

There, in assessing whether forbearance from the application of the separate affiliate safeguards in Section 272 of the Act was appropriate for BellSouth's reverse directory services, the Commission rejected an analysis that did not take into account the Section 272 goals of preventing discrimination and cross-subsidization. It did not matter that, as BellSouth argued in that proceeding, the specific safeguards in Section 272

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[13] GTE Pet. at 30-32. See also, Ameritech Pet. at 7-8.

[14] See Bell Operating Companies Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities, CC Docket No. 96-149, DA 98-220 (released Feb. 6, 1998)(BOC Forbearance Order).

[15] Id.

technically only address the relationship of the Bell Operating Company (BOC) to its Section 272 affiliate; the ultimate purpose of those safeguards is to protect consumers from anticompetitive behavior that initially might only be directed against competitors but undermines "the benefit of competition" to "consumers" in the long run.[16]

1. The Reasonableness of Charges and Practices Under Section 10(a)(1)

Thus, in applying the "just and reasonable" and "not unjustly or unreasonably discriminatory" criterion in Section 10(a)(1), the BOC Forbearance Order requires a competition-oriented analysis that takes into account the purposes of the provision from which forbearance is sought. There, in applying the Section 10(a)(1) criterion to BellSouth's request for forbearance from the application of the separate affiliate requirements of Section 272 to its provision of reverse directory services, the Commission looked beyond BellSouth's reverse directory charges to consumers and considered claims of discrimination against competitors by BellSouth in its provision of customer database listings necessary for the competitive provision of reverse directory services.

The Commission explained its approach in terms that echo the competitive context of the ILECs' request for forbearance relief from the application of Section 222 in this proceeding:

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[16] Id. at ¶ 92.

> ... BellSouth has competitive advantages in the provision of reverse directory services within its region. ...[W]e conclude that these competitive advantages stem from BellSouth's dominant position in the provision of local exchange services.... These advantages will persist if BellSouth continues to deny unaffiliated entities access to all of the listing information that it uses to provide reverse directory services.... We therefore conclude that, until it provides such access ... BellSouth's subscriber listing information practices [in connection with its provision of reverse directory services] will be unjustly or unreasonably discriminatory within the meaning of section 10(a)(1).[17]

This discussion in the BOC Forbearance Order demonstrates the inadequacy of the ILECs' showing as to the first criterion for forbearance relief. GTE addresses the reasonableness of the charges to customers in the short run if forbearance is granted, but it completely ignores the unreasonableness of its proposal in light of its long-term competitive impact. As in the BOC Forbearance Order, the ILECs have "competitive advantages [that] stem from [their] dominant position in the provision of local exchange services." "These advantages will persist" if they are allowed to use, without customer approval, the CPNI in their vast customer databases -- which they possess by virtue of their dominant positions -- to market new service categories.

The ILECs' approach is especially likely to disadvantage competitive carriers desiring to offer packages of services, since such carriers are more likely to be currently providing only one category of service to most of their customers. The anticompetitive consequences of the ILECs' approach makes it

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[17] BOC Forbearance Order at ¶ 82.

unreasonable "within the meaning of section 10(a)(1)."

2. The Protection of Consumers Under Section 10(a)(2)

GTE argues that the Section 10(a)(2) criterion -- that enforcement of the regulation at issue is not necessary for the protection of consumers -- is met because consumers would welcome information about service enhancements and would not be subject to so much "blind" marketing. As discussed above, however, there is no support for GTE's assumption that consumers will have no interest in protecting and controlling their CPNI in the possession of a carrier providing them a package of services, and the likely reality is just the opposite, especially in the case of an ILEC providing a "package" of local and wireless services to a customer to whom it desires to market a long distance "enhancement."

Even apart from the invalidity of GTE's factual assumptions, it is necessary, in applying the protection of consumers criterion in Section 10(a)(2), to take into account the competitive goals of Section 222, just as the Commission took into consideration the antidiscrimination goals of Section 272 in reviewing the Section 10(a)(2) criterion in the BOC Forbearance Order. GTE completely ignores those goals by considering only how helpful its approach will be to carriers providing a package of services. Its approach will have an anticompetitive result, because it will allow carriers with large, complete customer databases derived from the provision of monopoly services to "win

or retain customers on the basis of ... a competitive advantage conferred solely due to their incumbent status," not on the basis of "their service quality and prices."[18]

Such an advantage would help AT&T, with its immense customer database derived from its previous nationwide monopoly, and the BOCs, but would disadvantage other carriers with smaller, less complete customer databases and offering a narrower range of services. The latter would have an even more difficult time breaking into new markets against incumbents. The result would be diminished competition. Ironically, competition in the provision of packages of services would be especially at risk, since the ILECs' approach would tend to consign that market to incumbents by making it more difficult for competitive carriers providing a narrower range of services to current customers to expand into new markets. Thus, application of the Commission's total service approach is necessary for the protection of consumers, precluding forbearance relief.

3. The Public Interest Under Section 10(a)(3)

Similarly, the ILECs' request for forbearance cannot pass the third test for forbearance -- namely, whether forbearance would be in the public interest, taking into consideration whether forbearance would promote competitive market conditions, as required under Sections 10(a)(3) and 10(b). For the reasons explained above, forbearance would undermine, rather than

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[18] Order at ¶ 66.

promote, competitive market conditions. GTE's discussion of this criterion focuses on one aspect of competition, namely, the greater ease that some carriers, such as its CLEC, will have in penetrating new markets if they can use CPNI to market new categories of services without customer approval.[19] The problem with that analysis, as the Commission pointed out in the Order, is that competition will be harmed, not promoted, if carriers with monopoly-derived CPNI advantages are able to win or retain customers based on those advantages, rather than having to compete based on marketing skill and service quality.[20]

GTE's example of its own "CLEC" inadvertently provides a perfect illustration of the anticompetitive effects of its approach. GTE's CLEC is not a competitive LEC at all, but simply another arm of GTE's own monopoly local operation that will not be competing against the GTE Operating Companies. Since GTE's CLEC will be providing the same categories of service that the GTE Operating Companies provide, and since it will not be competing against the Operating Companies, the latter will be sharing all of their CPNI with the "CLEC," thereby allowing it to fully exploit GTE's monopoly-derived CPNI advantages to the detriment of real competition. Thus, it is even clearer than in the case of the first two forbearance criteria that forbearance cannot meet the third criterion, which explicitly addresses competitive conditions and the public interest. Accordingly, the

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[19] GTE Pet. at 31.

[20] Order at ¶ 66.

ILECs' requests for forbearance from the application of the total service approach to service package enhancements or services related to current service packages should be denied.

C. Targeted CPNI Approval Solicitations Should be Allowed

GTE also requests, in the alternative, that if the Commission does not allow CPNI to be used without customer approval to market enhancements to a customer's service package, carriers offering packaged services be allowed to use CPNI to identify those customers who might be interested in enhancements to such packages and solicit their approval to use their CPNI to market such enhancements. Such approval would have to be secured prior to any such marketing. GTE points out that the securing of approval prior to marketing protects customer privacy interests while permitting more targeted, and thus less indiscriminate, marketing to customers who would not be interested.[21]

MCI would not object to such a rule, as long as it were applied across-the-board, rather than just in the service package enhancement context. In other words, CPNI could be used to target customers to solicit their consent to use or disclose such CPNI for any purpose. Permitting the use of CPNI to target customers for the soliciting of such approval is justified, first, as account maintenance -- the type of "housekeeping" that is part and parcel of providing telecommunications service and thus within the customer's total service relationship under

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[21] GTE Pet. at 29.

Section 222(c)(1). Moreover, such targeted approval solicitation would seem to be implicit in the customer approval clause in Section 222(c)(1). The soliciting of such approval, which is a logical prerequisite to approval, necessarily also falls within the approval exception to the restrictions in Section 222(c)(1). Accordingly, the use of CPNI for any approval solicitation purposes should be permissible under Section 222(c)(1).

II. THE "WINBACK" PROHIBITION SHOULD NOT BE LIFTED FOR ILECs USING THEIR UNIQUE MONOPOLY-DERIVED CUSTOMER INFORMATION

A. Reconsideration of the Winback Prohibition as to ILECs Should be Denied

Various parties request that the "winback" prohibition be modified or eliminated for some or all carriers. Some parties draw the same distinction as MCI -- between competitive carriers using information derived from their provision of "retail" service and ILECs using unique information derived from their provision of monopoly service to other carriers. These parties request that the winback prohibition be eliminated only in the former situation. Like MCI, they explain that the winback prohibition is only necessary on account of ILECs' misuse of carrier proprietary information and should not be applied to all carriers' use of CPNI to win back or retain customers.[22]

For the reasons explained in MCI's Petition for Reconsideration, it does not oppose requests to eliminate the winback prohibition for competitive carriers. As those parties

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[22] See, e.g., Frontier Pet. at 9.

point out, winback or retention marketing by a carrier using CPNI that it derived from providing a competitive service to a customer that it had to win in the first place is procompetitive and furthers all of the goals of Section 222. The "bidding" between two competitive carriers that occurs when one such carrier tries to win back a customer who has chosen to switch to another is the essence of competition.

As MCI explained in its Petition, the use of customer information for winback marketing is only an anticompetitive abuse in the context of ILECs' abuse of their monopoly status as the underlying network facilities-based service providers to CLECs reselling local service or access service providers to interexchange carriers (IXCs). The opportunity for such monopoly abuses arises when an ILEC, acting in its capacity as the underlying facilities-based carrier, learns from a changeover order that a local service customer intends to switch to a local service reseller. The ILEC then exploits that advance notice of the customer's intent to change local carriers by attempting to retain the customer before the change is actually carried out. The ILEC obtains such advance notice only because it is the underlying monopoly network facilities provider serving the local resale carrier.

Moreover, since ILECs also implement primary interexchange carrier (PIC) changes, an ILEC providing long distance service can exploit its monopoly control of the local switch to use its early knowledge of a customer's switch to another PIC to injure

interexchange competition through retention marketing in the same way. In both situations, the ILEC learns of the intended switch faster than any competitive carrier would learn of a customer's decision to leave because the ILEC is the entity that has to implement the change on behalf of the competitive carrier that has won the customer's business.

Such exploitation of the ILECs' role as underlying carriers or access providers in these situations not only misuses CPNI, but also misappropriates carrier proprietary information protected under Section 222(b). There are no exceptions to Section 222(b); an underlying carrier must therefore never use for its own benefit proprietary information that it learns in the course of providing service to another carrier.[23] Moreover, customers cannot consent, impliedly or otherwise under Section 222(c)(1), to underlying carriers' misuse of resellers' carrier proprietary information or the misuse of PIC change information, which are absolutely protected under Section 222(b).

The nature of the information being exploited by an ILEC in this situation also answers GTE's point that the winback prohibition is overbroad because it could be read to prohibit the use of CPNI even where the customer has given approval under Section 222(c)(1).[24] Since a customer can never approve the use of carrier proprietary information, there is no inconsistency.

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[23] See Comments of MCI Telecommunications Corporation at 13-16, CC Docket No. 96-115 (filed March 30, 1998).

[24] See GTE Pet. at 34-35.

The nature of the information also rebuts GTE's and BellSouth's arguments that prohibiting a carrier from using CPNI to win back a customer is an unconstitutional taking of a carrier's property.[25] Since the information being misused by the ILEC is another carrier's proprietary information, it is the ILEC, not the government, that is appropriating another's property, if, in fact, there are any property rights involved here at all.

Various ILECs argue that the procompetitive effects of winback or retention marketing occur when conducted by any carrier,[26] but the use of carrier proprietary information by a monopolist to resist a customer's switch to a competitive carrier is the very antithesis of competition. Allowing such tactics would severely undermine competition, especially nascent local competition.

GTE posits a situation where a customer calls her carrier to inform the carrier that she is considering switching to another carrier and suggests that, at least in this situation, the winback prohibition is inconsistent with the inbound marketing explicitly authorized by Section 222(d)(3).[27] USTA and BellSouth also assume that the carrier learns of the customer's intentions from the customer, presumably in a call to a customer

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[25] See, e.g., BellSouth Pet. at 18.

[26] See, e.g., USTA Pet. at 6-8; BellSouth Pet. at 16-18; ALLTEL Pet. at 7.

[27] GTE Pet. at 33.